

Remarks

Reconsideration of this Application is respectfully requested.

In the Office Action dated July 20, 2009, claims 1-36 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Leonard et al., U.S. Patent No. 7,188,120. Claims 1-36 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Price et al., U.S. Patent No. 7,337,445. Claims 1-36 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by TechOne Hosting (2003).

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Declaration under Rule 131 – Conception of the Invention

In the Office Action, paragraphs 4 and 5, the Examiner states that the evidence submitted is insufficient to establish conception of the invention prior to January 20, 2004 (the filing date of Leonard) and January 28, 2004 (the filing date of Price). Applicants respectfully disagree. One of the exhibits, Exhibit A-1 is an email dated December 30, 2003, with two attachments, “scheme1” and “scheme2” (3 pages total). The attachments are substantially similar to the figures of the present application. Also, the attachments show every element of, for example, claim 1. The illustrations on the following pages represent the attachments scheme1 and scheme2 to the email of December 30, 2003 (Exhibit A-1 of the Declaration), with the letter designations added (see circles with the letters inside and arrows, added for purposes of illustration to the original figures, see also corresponding text in bold, in the claim below):

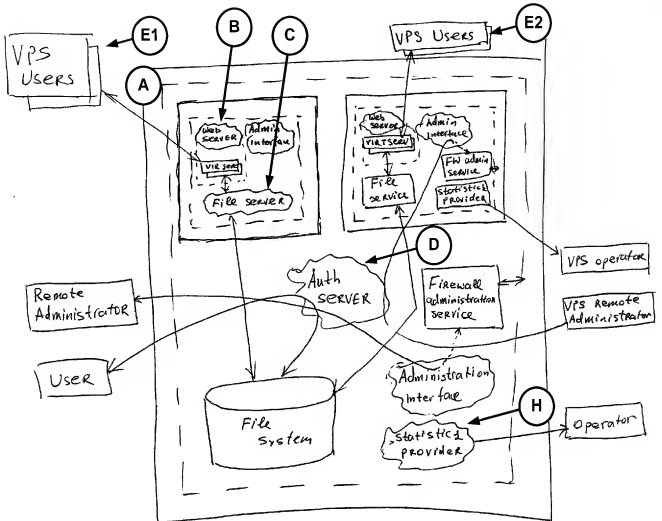
1. A system for managing administration of computer services provided to users comprising:

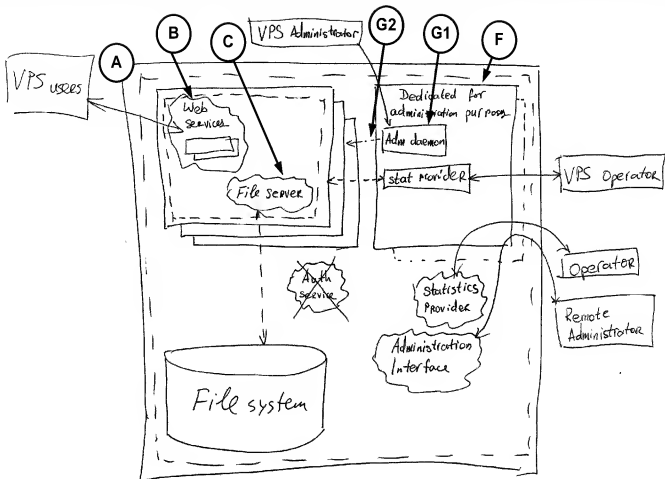
a computer system; **[See A in the figures on next page]**

an operating system running on the computer system; **[inherent in any computer system]**

a plurality of server processes **[See B, C, D]** running on the computer system, wherein the processes provide services to a plurality of remote users **[See E1, E2]**; and

at least one designated Virtual Private Server (VPS) **[See F]** with a set of services that perform administrative operations **[See H – providing statistics is an example of administrative operations]**, wherein the designated VPS **[See F]** provides administrative services **[See G1, G2]** to each of the server processes **[See G2]** and wherein the designated VPS is isolated by a logical isolation of processes **[See box designated by F, see also exhibit A4, line 9 (in Russian) and Exhibit A6, line 10 (English translation of Exhibit A4), discussing isolation of the processes]**.





Thus, as may be seen from the above annotated illustrations, and the mapping of the claim to the illustrations, Applicants were in possession of the invention at least as early as December 30, 2003 – which is prior to the filing dates of both Price and Leonard.

Accordingly, Applicants respectfully submit that the evidence submitted with the Rule 131 Declaration is sufficient to establish conception of the invention prior to the filing dates of Leonard and Price.

Applicants also respectfully point out that it is sufficient to show conception of only one claim (e.g., claim 1).

Declaration under Rule 131 – Reduction to Practice

The Office Action, in paragraphs 6 and 7, contends that Applicants have failed to establish diligence in reduction to practice, for purposes of overcoming the Leonard and Price references. Applicants respectfully disagree.

First, Applicants respectfully point out that the Office Action appears to require diligence prior to January 20, 2004. This is incorrect. Diligence in reduction to practice is required **only** between the filing date of Leonard (January 20, 2004) and the filing date of the present application – April 19, 2004. There is no requirement to show diligence in any other time period, contrary to the suggestion in the Office Action (see paragraph 6 of the Office Action, which, at lines 9-13, seems to suggest that diligence needs to be shown earlier than January 20, 2004. This is not the case – the only relevant period for showing diligence is January 20 through April 19, 2004).

Applicants also respectfully disagree with the statement in paragraph 7 of the Office Action, regarding any unaccounted-for time periods. The tenor of the comments in paragraph 7 of the Office Action appears to suggest that Applicants need to show that “something” was done

on the application virtually every day between January 20 and April 19, 2004. **This is not, and has never been, the law** regarding Rule 131 Declarations. There is no requirement – not in case law, not in the MPEP, not in the Rules, that to show diligence, Applicants need to account for every day of the relevant time period. All that needs to be shown is that Applicants were diligently working on constructive reduction to practice. To that end, Applicants have submitted evidence of specific and ongoing activities by the inventors and the patent attorney on the following dates:

January 21, 2004
February 9, 2004
February 18, 2004
February 19, 2004
February 25, 2004
March 24, 2004
March 29, 2004
April 2, 2004
April 4, 2004
April 6, 2004
April 9, 2004
April 15, 2004
April 16, 2004.

The dates, and the exhibits submitted with the Declaration, clearly show significant and ongoing effort directed to writing and completing the application, both by the patent attorney and by the inventors. Applicants also point out that the inventors in this case have significant business duties aside from the patenting process – as would be expected. For example, Serguei

Beloussov, one of the inventors, is the CEO of SWSOft, the assignee of the present application (now Parallels Holdings, Ltd.) – a company that currently has about 1,000 employees worldwide. Mr. Beloussov is also the majority shareholder of Acronis, Inc., a data backup and storage software company, currently with about 500 employees worldwide. As the majority shareholder, Mr. Beloussov is closely involved with Acronis' business as well.

Stanislav Protassov, another inventor, is the managing director of the Moscow office of SWSOft/Parallels, with several hundred employees under his supervision. Alexander Tormasov is (and was) the Chief Scientist of Parallels (then SWSOft), and in 2004 also performed a similar role for Acronis.

In other words, although the inventors self-evidently have business duties other than patenting, nevertheless, the exhibits and the timeline demonstrate consistent and significant effort over the relevant time period directed to constructive reduction to practice of the invention. Applicants also point out that unlike attorneys, who frequently keep daily records of the time spent on each matter, none of the inventors have such a requirement – which, again, is a common situation in the business world. It is entirely unrealistic to expect a daily accounting of the time that the inventors spent on this patent application – which is a situation that is entirely analogous to most such applications. Nor does the law require it.

Additionally, the “unaccounted-for time” is far too short to demonstrate a lack of diligence. To use the most obvious example, the Office Action points to a “gap” between February 9, 2004 and February 18, 2004. This is only seven days – a very short time period.

Applicants again emphasize that there is no requirement in the law that every single day be accounted for.

Reconsideration is respectfully requested.

Rejections under 35 U.S.C. § 102(e) based on Leonard

All the claims stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Leonard. These rejections are respectfully traversed. A key feature of claim 1 is “at least one designated Virtual Private Server (VPS) with a set of services that perform administrative operations, wherein the designated VPS provides administrative services to each of the server processes ...” This feature is not taught or suggested by Leonard.

Leonard discusses two types of “zones” – a “global zone” and “non-global zone.” A global zone, somewhat simplistically, is the operating system and processes that run under that operating system with system privileges. A global zone has an administrator (in conventional terms, the computer’s administrator, or someone who has system or root privileges). Non-global zones are virtual environments, which are isolated from each other. This is generally discussed in columns 3-5 of Leonard.

The one key aspect that Leonard **fails to discuss** is the **dedication of a virtual private server (or, using the language of Leonard, a “non-global zone”) to administrative functions**. In fact, Leonard teaches the exact opposite – for example, at column 3, lines 31-35, and column 4, lines 23-26, Leonard specifically explains that it is the administrator of the global zone – in other words, the system administrator with root privileges – who manages the administration of

the non-global zones. This is the exact opposite of what is claimed – which is that a virtual private server (“non-global zone” in Leonard’s terminology) that is dedicated to administrative tasks. Thus, Leonard clearly fails to teach every element of claim 1, and reconsideration is respectfully requested.

Applicants also respectfully point out that the Office Action cites the entire column 5 of Leonard as allegedly disclosing the virtual private server dedicated to administrative tasks. As discussed above, Applicants respectfully disagree, and a careful reading of Leonard (or, for that matter, Price) fails to disclose this aspect. If the Examiner continues to maintain the rejection, Applicants respectfully request that the Examiner point out with specificity where in Leonard’s column 5 this claimed feature is found.

Rejections under 35 U.S.C. § 102(e) based on Price

All of the claims stand rejected under 35 U.S.C. § 102(e) based on Price. These rejections are respectfully traversed. Both Price and Leonard claim priority to the same provisional application, and the first two or three columns of both Price and Leonard that deal with the description of their invention are substantially identical. Therefore, Price fails to disclose the dedication of a virtual private server to administrative tasks, for the same reason that Leonard fails to disclose it. Reconsideration is respectfully requested for the same reasons as those applicable to Leonard.

Provisional Application No. 60/469,558

Separate and aside from what Price and Leonard disclose is the question of what their priority document discloses. Both Price and Leonard claim priority to the same provisional application No. 60/469,558. That application, which Applicants have reviewed previously, fails to disclose the relevant claimed aspect – dedication of a virtual private server to administrative tasks – as Applicants have previously pointed out. The Office Action, in referring to the provisional application, only cited lengthy multi-page passages (for example, pages 1-80) of the provisional application. If the Examiner continues to rely on the provisional application as disclosing the relevant feature, Applicants respectfully request that the Examiner point out with specificity where, in the document, the virtual private server that is designated for administrative tasks is taught. Applicants have also previously pointed out that the burden in this case shifts back to the USPTO, regarding a specific showing of where, in the provisional application, the relevant disclosure is found.

Rejections under 35 U.S.C. § 102(b) based on TechOne

All the claims stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by TechOne. These rejections are respectfully traversed. TechOne, as best as can be determined, is a customer of SWsoft (the assignee of this application). The Virtual Private Servers discussed in the document are (again, as best as can be determined) software products sold by SWsoft. The relevant feature – “at least one designated Virtual Private Server (VPS) with a set of services that

perform administrative operations, wherein the designated VPS provides administrative services to each of the server processes ...” – was not on sale in 2003.

The Office Action refers to page 14 as allegedly disclosing the aspect of VPSs dedicated to administrative functions. Respectfully, this is incorrect. “Dedicated VPSs” in TechOne are not dedicated to administrative functions – they are **dedicated to a particular user** – i.e., to a particular TechOne customer (i.e., an owner of a website or domain). The TechOne document is essentially an advertisement intended to explain the differences between dedication of a physical machine to a customer and dedication of a VPS to a customer. It has nothing whatsoever to do with the claimed feature “at least one designated Virtual Private Server (VPS) with a set of services that perform administrative operations, wherein the designated VPS provides administrative services to each of the server processes ...”

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,
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